

ct. 466.

Brief of Lewis for Appell. (mo)

OCT 9 1897
JAMES H. McKEN

IN THE
Filed Oct. 9, 1897.
Supreme Court
OF THE
United States

October Term, 1897

HENRY CRAEMER,

Plaintiff.

vs.

WILLIAM MOYER, SHERIFF OF KING COUNTY,
STATE OF WASHINGTON, AND THE STATE OF
WASHINGTON,

Appellees.

**In Error to the Circuit Court of the United States
for the District of Washington.
Northern Division.**

Brief of Appellant on Motion to Dismiss.

JAS. HAMILTON LEWIS,
CHARLES A. RIDDLE,
JOHN W. PRATT,

Counsel for Appellant.

20th June 1902

Dear Sir,

I have the pleasure

to inform you

that the same has been forwarded to you

Yours faithfully

Wm. J. Smith

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Brief of Appellant on Motion to Dismiss.

The appellant begs to impress upon the court that this appeal by law must be determined upon what the record says, upon what is admitted, and altogether upon the statements admitted to be true by the lower court in denying even a rule to show cause why the writ should not issue.

No attempt by respondents to inform the court what they believe was the intent of appellant or was the cause of this appeal, when disclosed by evidence, or what was the construction sought by appellant can be considered by this court; for such would deny the appellant the opportunity of disproving the assumptions of respondents, or of meeting or denying them.

Upon the admitted record, as upon complaint upon which merely summons is asked, will the court now determine the only question before it, to-wit: Should not the lower court, upon the petition admitted as true, have granted to petitioner the writ of Habeas Corpus, or what petitioner prays for, some rule to show cause why the writ should not issue? a mere summons; some opportunity for some sort of hearing upon his admitted complaint.

Thus the only question before this Court resolves itself into this one: Was not the petitioner entitled to some sort of process upon the admitted allegations of his petition, by which he could have presented his alleged wrongs which involve his life?

As the record stands, the Court is not even called upon to make the ordinary inquiry necessary to causes similar to this previously before the Court, to-wit: *What are the merits of the petition upon the hearing?*

This cause is limited by the lower Court's action to the only question—should not the petitioner, upon the petition, have been given the right of having some opportunity for a hearing?

This is the only query in this cause.

IT IS ADMITTED that the lower Court

Refused to issue the writ;

Refused to issue an order to show cause;

Refused to make any order restraining respondents from taking the life of this petitioner;

Refused to take any form of jurisdiction in anywise whatsoever.

We now consider what are the allegations of the petition and what facts are admitted by the respondents, as appear from the record:

1. That as a citizen of the United States he is held by the respondent, Sheriff, who threatens and attempts to take his life.

Petition, paragraphs 1 and 2, (admitted).

2. That petitioner was charged with three offenses, to-wit:

Murder in the first degree,

Murder in the second degree, and

Manslaughter.

That the jury by verdict convicted petitioner, after trial, of the only offense of murder in the second degree, granting all presumptions of construction to the State, to which offense by law of the State of Washington no legal punishment for more than twenty years' imprisonment in the penitentiary could in anywise legally be imposed.

That the petitioner was never convicted by jury of murder in the first degree, or of any offense to which the sentence of death could legally or at all be attached.

Petition, paragraph 4, (admitted).

3. That appeals to the Supreme Court of the State of Washington and all appeals permitted by State law had been taken; all remedies exhausted Petitioner being denied his relief upon the ground that there was no local law permitting appeals upon questions such as raised by petitioner. That all steps preliminary for applying for a writ of Habeas Corpus had been taken.

Petition, paragraphs 5 and 6, (admitted).

4. That petitioner only sought to have such punishment inflicted upon him as by the local law could be had upon the verdict and judgment in the cause.

That petitioner presented before the court the document-

any evidence taken from the records and journals of the State Court, establishing the facts of petitioner's complaint.

All of which allegations are admitted. The records and journal entries referred to neither dispute nor does any construction of respondents offer to justify the threatened action of respondents.

Petition, paragraph 13, (admitted).

That there was not only no due process, but no process of any nature whatsoever upon which petitioner's life could be taken.

Upon all of these admitted facts was it not a violation of the Constitution and the law to take the petitioner's life? Would it not be equally so to attempt to take his life? Is he not entitled to a hearing that he may be relieved of the threat and attempt to take his life, upon a process which, as admitted, only justifies, authorizes, or permits by State law, imprisonment in the penitentiary?

Was not the immunity granted by the Constitution of the United States to the petitioner, saying that his life should not be taken without due process of law a right and privilege to be enforced upon the admitted facts in the Federal Court?

Should not the Federal Court take jurisdiction upon the admitted facts so as to prevent the State, or other person, from taking the life of petitioner where there was, as admitted, no due or other process of law for the same?

We respectfully insist that under the law petitioner's only resort, his proper and constitutional resort, was for a hearing before the Federal Court in order that his constitutional right of life be not taken from him without due process of law.

Without elaborating the cases it is sufficient to cite them

by name to remind the Court that at no time has this Court or any United States Court, upon such a state of facts and record as is here presented, ever denied a petitioner some form of hearing and some form of relief, and in each instance this relief was had through the only mode pointed out by United States law, at a hearing through the proceeding of Habeas Corpus.

Ex parte Royall, 117 U. S., 241.

Ex parte Wilson, 115 U. S., 417.

Ex parte Kemmler, 136 U. S., 436.

Ex parte Terry, 128 U. S., 289.

Wood vs. Brush, 140 U. S., 278.

Ex parte Frederick, 149 U. S., 70.

Ex parte Neilson, 131 U. S., 176.

The whole trend of all of these decisions establishes what the Court in its own words has announced, to-wit: "A party is entitled to a Habeas Corpus, not merely where the Court is without jurisdiction of the cause, *but where it has no constitutional authority or power to condemn the prisoner*" (Italics are ours).

These views, with expressions and separate elaborations, depending upon the particular facts in each case, have frequently been announced. In citing

Ex parte Neilson, (Supra),

Ex parte Lange, 18 Wall, 163,

Ex parte Siebold, 100 U. S., 371,

Re Snow, 120 U. S., 274,

Re Coy, 127 U. S., 731,

reference is fully made and some recurrence to them now will demonstrate that petitioner has been careful to bring

himself within the exact requirements of these separate rulings and here and now insists that the case of

Re Coy, 127, U. S., 731,

brought up by petition for Habeas Corpus upon allegations therein admitted by demurrer to the petition is exactly parallel with the case at bar, and that the words of Mr. Justice Miller, speaking for the Court, in that case, saying, “ * if * want of power appears on the face of the record * * whether in the indictment or elsewhere, *the Court which has authority to issue the writ is bound to release him.*”

We respectfully insist that the record in that cause together with the reasoning and the decision is parallel and ruling in the present case now before the Court.

To the same effect has ever the law been declared.

Ex parte Mayfield, 141 U. S., 107.

Holding the Court's right to go even outside of the record.

Ekin vs. United States, 142 U. S., 651.

Ex parte Burrus, 136 U. S., 586.

The construction of sections 751-755, 761 of the Revised Statutes is taken up in

Whitten vs. Tomlinson, 160 U. S., 231,

and the doctrine laid down in

Ex parte Royall, (*supra*),

reasserted.

We insist that this cause is directly within the exceptions marked out in

Andrews vs. Schwartz, 156 U. S., 272,

and particularly within the Chief Justice's suggestion as to when the Court will take jurisdiction—both as to the manner of the statements in the pleading and the subject matter—as stated in

Kohl vs. Lehlback, 160 U. S., 293.

(Note.—The statutes of the State of Washington applicable hereto are incorporated herein at the conclusion of this brief.)

PLEADING.

As an escape from the conclusions irresistibly reached by the record, it is asserted by the respondents that the fault lies in the pleading, to-wit: That the petition does not state facts with sufficient detail. We deny such statement. But aside from controverting the allegation, it must be noted that petitions for Habeas Corpus are not governed by ordinary rules of pleading applicable to complaints in civil actions. This is established by so many rulings that we refrain from citing at this point the train of cases.

Clear is this—

1. It is not a suit, but a proceeding.
2. Having for its object the avoidance of circuitous detail, it provides for the mere statements however crude, that a citizen is being deprived either of life or liberty unconstitutionally.

The assertion of any one fact upon this line entitles him to a hearing and investigation. The object of the law being not to avoid, but to accept, under all conditions, the opportunity of hearing the complaint of those in jeopardy of life or liberty.

For such was the Habeas Corpus enacted.

We have heretofore shown that the statements in the petition stated with particularity facts. It will be further noted that

Revised Statutes, 754, *et seq.*, and

2 Hill's Code of Washington, Sec. 712, *et seq.*,

present the form of pleading in Habeas Corpus, which is followed literally.

Therefore, following this provision of the Code substantially is all the Code requires.

2 Hill's Code of Washington, Sec. 206.

Following, therefore, the Code substantially is all the United States Courts require in such matters.

Roberts vs. Lewis, 144 U. S., 367,
and decisions subsequent.

We analyze the complaint and observe the specific facts:

1. In actual imprisonment and about to be hung by respondents.
2. Never been convicted for any offense justifying death sentence or authorizing such. (Is not this a statement of fact, and is it not admitted?)
3. That he was convicted of an offense which, by law, only sentenced him, at the very uttermost, to imprisonment in the penitentiary, to-wit: Murder in the second degree. (Is not this a statement of fact?) Would all the elaboration possible, beginning from the time of his arraignment, including every step of his trial, state a fact any more clearly as a fact?
4. That there is no law in existence authorizing the taking of his life for the offense of which he has been convicted. (Is not that a fact?)
5. That he has taken his appeal to the different State Courts, but denied relief. (Is not that a statement of a fact?)
6. That the evidence of his statements is contained in the records of the State Court. Sets forth the number of the record and the place of its existence. (The very manner of pleading such Record and referring thereto as required by the Code.) Is this not a statement of fact?

Are not all of these facts admitted?

Therefore, under Section 754 of the Revised Statutes, the respondents making no return and no other evidence in anywise being tendered or suggested, are these facts not binding as admissions upon this Court as they must be upon the Court below?

This Court will not assume that the facts could have been controverted by return or by evidence in order to presume a reason for the lower Court's refusal to take any action.

This Court will compel a lower Court to be diligent and have placed upon the Record by proper hearing, what proper course and proceeding was had upon any matter that might have existed which would excuse or justify the Court in refusing process upon the petition for a writ.

We call to the Court's attention that petitioner has complied with, and is strictly within, the rule of pleading laid down by this Court in

Re Coy, 127 U. S., 731,
and particularly in

Whitten vs. Tomlinson, 160 U. S., 231.

In that case the allegation held insufficient was "that no indictment was ever found against him by any grand jury
* * * within the State of Connecticut, nor no indictment as and for a true bill ever was presented * * *
in said state of Connecticut."

Truly, as said the Court, there is no allegation that no indictment has been returned against him from any state, nor that there is no conviction whether by indictment marked a true bill or not. But the case at bar meets the words of Mr. Justice Gray by stating *that no conviction of murder in the first degree or of any offense involving his life at any time or place exists*

or existed against the petitioner upon which his life was sought. (Is not this a fact and clear without equivocation which could give rise to construction that could negative it?)

Is not the Record in exactly the condition which the Court says would be sufficient if the Record in Whitten vs. Tomlinson, *supra*, had been so?

Again we are within the case of

Kohl vs. Lehlback, 160 U. S., 293.

The very requirements upon the question of pleading demanded by this Court is set out in

Ex parte Cuddy, 131 U. S., 280.

The writer of this brief, who prepared the petition, specifically complied with the same; saying, that the petition should set forth "the fact, concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known." R. S., Sec. 754; and further, the facts that the Court had no jurisdiction or the person no authority to execute the threatened process.

In the case at bar, to avoid the conclusions of the Cuddy case, your petitioner specifically alleges that he has done *no act at all* by which he should suffer death, and he sets out that he was convicted of murder in the second degree, that for such offense, at the time of the offense and the conviction, and now, only the punishment of imprisonment existed. Are these not plain facts and directly within the exception and rule announced in the Cuddy case? Could not the Lower Court see that and, knowing the law, was he not called upon to recognize judicially the laws of the State of Washington?

Therefore, upon this petition setting forth the facts required by Revised Statutes, Sec. 754, was not not petitioner entitled to some answer or some denial if the facts were not true, that justice could be had?

The Court will observe that the requirements of the Revised Statutes and the Code of the State of Washington as to pleadings in Habeas Corpus are exactly the same. *Both have been literally and exactly complied with.*

THE COURT'S OPINION.

But it will be marked that the lower Court in no wise assumed or suggested that the petition was not in every wise complete in its detail of statements. *Relief or process was not denied upon any such grounds or even hinted by which petitioner could have amended and pleaded with more particularity in order to obtain his rights.* A privilege surely to be accorded him if merely defect in manner of statements stood in the way.

This is an appeal from the lower Court and from the reasons given for refusing any one of the following:

- a. To issue the Writ,
- b. To grant a rule to show cause, or
- c. To restrain the Sheriff from taking the life of the prisoner pending some action in his behalf to protect his constitutional rights.

It will be noted that the Honorable Court below has filed no opinion and left no written opinion for his rulings to be brought before this Court. The oral observations can only be preserved and now presented for the purpose of showing that no question of pleading in anywise was present or controlling in the Court's action.

The case of *Cramer vs. The State of Washington*, No. 457, had been before this Court upon the legality of his conviction for an offense alleged therein, the only question involved being the validity of the law of the State of Washington providing for the prosecuting of felonies by information, while this cause against the Sheriff and the State in form of Habeas

Corpus, a different one altogether, and upon a different point completely, is assumed by respondents to have been ruled by the former case because it was in the power of the petitioner in that case to have called to the Court's attention the points here raised, and this though at the time there was no attempt to take the action now threatened.

It is needless to suggest that one was a criminal case and the other a civil proceeding. They are in no wise dependent upon each other. The learned Court's observations, only incidentally mentioned here, were not only incorrect, but clearly establishes that no question of pleading, which is now raised to avoid the just conclusions which follow from this record, was ever before the mind of the Court or suggested by the respondents.

We respectfully urge that this cause must be reversed and remanded upon the admitted facts, with direction to grant the Writ and compel return that petitioner may obtain his constitutional rights.

Respectfully submitted,

JAS. HAMILTON LEWIS,
CHARLES A. RIDDLE,
JOHN W. PRATT,

Counsel for Appellant.

NOTE.

MURDER IN FIRST DEGREE DEFINED.

Every person who shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery, or burglary, or by administering poison, or causing the same to be done, kill another, shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death, * * *

2 Hill's Code of Washington, (P. C.) Section 1.

MURDER IN SECOND DEGREE DEFINED.

Every person who shall purposely and maliciously, but without deliberation and premeditation, kill another, every such person shall be deemed guilty of murder in the second degree, and upon conviction thereof, shall be imprisoned in the penitentiary for a term not less than ten nor more than twenty years, and kept at hard labor.

2 Hill's Code of Washington, (P. C.) Section 3.

MANSLAUGHTER DEFINED.

Every person who shall unlawfully kill any human being without malice, express or implied, either voluntarily upon a sudden heat, or involuntarily, but in the commission of some unlawful act, shall be deemed guilty of manslaughter.

Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one year nor more than twenty years, and shall be fined in any sum not exceeding five thousand dollars.

2 Hill's Code of Washington, (P. C.) Sections 7 and 11.